APPENDIX A

TERMS AND CONDITIONS

APPLICATION FOR AUTHORIZATION TO USE

PHASE I ENVIRONMENTAL SITE ASSESSMENT FOR LOWER BERRYESSA CREEK PROJECT
CALERA CREEK AND
TULARCITOS CREEK REACHES,
MILPITAS, CALIFORNIA
PROJECT NUMBER: 1697-4A

To: Lowney Associates
405 Clyde Avenue
Mountain View, California 94043

From (Applicant): _____
(Please clearly identify name and address of person/entity applying for permission to use or copy this document)

Ladies and Gentlemen:

Applicant hereby applies for permission to rely upon Lowney Associates work product, as described above, for the purpose of:
(state here the purpose for which you wish to rely upon the work product)

Applicant only can accept and rely upon Lowney Associates' work product under the strict understanding that Applicant is bound by all provisions in the Terms and Conditions attached to the report. Every report, recommendation, finding, or conclusion issued by Lowney Associates shall be subject to the limitations stated in the Agreement and subject report(s). If this is agreeable, please sign below and return one copy of this letter to us along with the applicable fees. Upon receipt and if acceptable, our signed letter will be returned. Lowney Associates may withhold permission at its sole discretion or require additional re-use fees or terms.

FEES: A $200 coordination fee, payable in advance, will apply. If desired, for an additional $150 report reproduction fee, we will reissue the report in the name of the Applicant; the report date, however, will remain the same. All checks will be returned if the request is not approved.

REQUESTED BY	**APPROVED BY** **Lowney Associates**
_____ Applicant Company	
_____ Print Name and Title	_____ Print Name and Title
_____ Signature and Date	_____ Signature and Date

TERMS AND CONDITIONS OF AGREEMENT

1.0 AGREEMENT

1.1 Lowney's services are defined by and limited to (1) those services (the "Work") described in the attached proposal, which is incorporated by this reference, and (2) these Terms and Conditions of Agreement ("Terms and Conditions"). Together, the proposal and Terms and Conditions form our Agreement. This Agreement represents the parties' entire agreement and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement can only be amended by a written instrument signed by both the Client and Lowney. Failure to immediately enforce any provision in this Agreement shall not constitute a waiver of the right to enforce that provision or any other provision.

2.0 MISCELLANEOUS CHARGES

2.1 Expenses and other similar project-related costs are billed at cost plus eighteen and one-half (18½) percent. Reproduction charges will be billed at twenty-five cents ($0.25) per page plus the technical assistant's time billed at their hourly rate. Fixed fee services will be performed for the agreed fixed fee sum.

3.0 TERMS OF PAYMENT

3.1 The Client's obligation to pay for the Work is in no way dependent upon the Client's ability to obtain financing or dependent upon the Client's successful completion of the project. Payment for Work and expenses shall be due and payable upon receipt of Lowney's statement. To be recognized, any dispute over charges must be claimed in writing within thirty (30) days of the billing date. Disputes or questions about a statement shall not be cause for withholding payment for remaining portions due. Amounts unpaid thirty (30) days after the issue date of Lowney's statement shall be assessed a service charge of one (1) percent per month on balances outstanding to compensate Lowney for the cost and burden of administering the account and collecting fees owed. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such a proceeding shall be entitled to, in addition to such other relief as may be granted, a reasonable sum for attorneys' fees and other costs. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

3.2 Lowney may at its option withhold delivery of documents and other data pending receipt of payment for all Work rendered and shall have no liability to the Client for delay or damage caused because of such withholding.

3.3 Lowney reserves the right to suspend services should payment not be received within 60 days of the date of the invoice following performance of services described in this Agreement and on invoice.

3.4 No deduction shall be made from Lowney's, its consultants' or its subcontractors' compensation due to penalty, liquidated damages, or other sums withheld from payments to contractors, or due to the cost of changes in the Work other than those for which Lowney or its consultants has been adjudged to be liable.

4.0 INSURANCE

4.1 Lowney, its officers, employees, and agents (hereafter referred to as Lowney) are protected by Worker's Compensation Insurance (and/or Employer's Liability Insurance), by Commercial General Liability Insurance for bodily injury and property damage, and by Professional Liability Insurance (including Contractor's Pollution Liability Insurance), and will furnish certificates thereof upon request. Client specifically agrees that Lowney will not be responsible for property damage from any cause, including fire and explosion, beyond the amounts actually paid by Lowney's insurance carriers under Lowney's available insurance.

5.0 LIMITATIONS

5.1 Client recognizes the inherent risks connected with construction activities, geotechnical investigations, environmental investigations, and assessments. Client also recognizes that actual conditions at the site may vary from those observed by Lowney when performing the Work. Client specifically acknowledges and agrees that the interpretations and recommendations of Lowney are based on information actually reviewed and conditions actually observed by Lowney. Lowney shall not be responsible for the validity or accuracy of data collected by others or interpretations made by others.

5.2 The Client agrees to defend and indemnify Lowney and its employees, consultants and subcontractors from any and all claims, damages, costs, and losses (included attorneys' fees and costs) arising out of or in any way related to the Work or the performance or non-performance of obligations under this Agreement except when the Claim arises from the established sole negligence of Lowney and its employees, consultants and subcontractors or where the Claim arises from the willful, wanton, or reckless conduct of Lowney and its employees, consultants and subcontractors.

5.3 In performing its professional services, Lowney will strive to use that degree of care and skill ordinarily exercised, under similar circumstances, by members of its profession practicing in the same or similar locality and under the same standard of care. Lowney's good faith reliance on representations of building, planning, regulatory or other public officials shall satisfy and fall within the standard of care. No warranty, expressed or implied, is made or intended by Lowney by the proposal for consulting services, the contract between Lowney and Client, or by furnishing oral or written reports of the findings made to the Client or any other person.

5.4 This paragraph limits Lowney's liability-READ IT CAREFULLY. The Client understands and acknowledges that the Work poses certain risks to both Lowney and the Client. Client further acknowledges and agrees that the amount of risk that Lowney accepts by this Agreement is commensurate with the amount of compensation received under this Agreement for the Work. Lowney's fee for the Work is based on and reflects Client's agreement to limit Lowney's liability as described below. Client specifically acknowledges and agrees that but for this promise to limit Lowney's liability, Lowney's fee would be significantly higher to accommodate Lowney for the risks posed by the Work and entering this Agreement. Client acknowledges its right to discuss this provision with legal counsel and negotiate with Lowney regarding this provision and the proposed fee. In reliance on the foregoing and in consideration for the fee proposed, Client specifically acknowledges and agrees that, to the fullest extent permitted by law, Lowney's total liability for any and all injuries, claims, liabilities, losses, costs, expenses, or damages whatsoever including, without limitation, attorneys' fees and legal costs (hereinafter "Claims") to Client and any third party arising out of or in any way related to the Work or this Agreement from any cause or causes including, but not limited to, Lowney's negligence, errors, omissions, or breach of contract or any duty, is limited to and shall not exceed $50,000 or the amount of Lowney's fee, whichever is greater (Option 1) except when the Claim arises from the sole negligence of Lowney or where the Claim arises from the willful, wanton, or reckless conduct of Lowney. In consideration of an additional fee of four (4) percent of Lowney's total Work fee or $400, whichever is greater, Lowney will raise the limitation of liability up to the amount actually paid by Lowney's insurance carriers for the Claims under Lowney's available insurance coverage (Limitation Increase) if and only if Client makes its written request for the Limitation Increase before the commencement of the Work and Client and Lowney each initial and date this paragraph 5.4 below (Option 2) except when the Claim arises from the sole negligence of Lowney or where the Claim arises from the willful, wanton, or reckless conduct of Lowney.

LIMITATION INCREASE: AGREED THAT LIMITATION OF LIABILITY INCREASED TO ACTUAL AMOUNT OF PROCEEDS PAID BY LOWNEY'S INSURANCE CARRIERS IN EXCHANGE FOR ADDITIONAL FEE OF FOUR (4) PERCENT OF TOTAL SERVICE CHARGE OR $400, WHICHEVER IS GREATER.

_____	_____	_____	_____
Client Initial	Date	Lowney Initial	Date

5.5 Client agrees on its behalf and on behalf of Client's officers, directors, partners, principals, agents, employees, successors, representatives, and assignees (collectively referred to as "Client Group") that in no event shall any action or proceeding be brought against Lowney by Client or Client Group for any claim or cause of action arising from or in any way related to the Work or this agreement unless such action or proceeding is commenced within three (3) years from the Date of Completion of Work provided by Lowney under this Agreement. Client and Client Group agree and acknowledge that the limitations period set forth herein supersedes, replaces, and supplants any and all limitation periods which would otherwise apply including, but not limited to, those appearing in the California Code of Civil Procedure. The Date of Completion shall be the date of the final invoice for the Work performed under this Agreement.

5.6 If Client requests that Lowney's work product be relied upon by a third party, including, but not limited to, a lender, Client specifically agrees to provide the third party with a copy of these terms and conditions and Client agrees to require said third party to agree to limit Lowney's total liability to Client and any third party as described in paragraph 5.4 above, and Client agrees to defend and indemnify Lowney and its employees, consultants and subcontractors from any and all third party claims, damages, costs, and losses arising out of or in any way related to the Work or the performance or non-performance of obligations under this Agreement except when the Claim arises from the sole negligence of Lowney and its employees, consultants and subcontractors or where the Claim arises from the willful, wanton, or reckless conduct of Lowney. Any third party which accepts Lowney's work product does so under the strict understanding that the third party is bound by all provisions in these Terms and Conditions including, but not limited to, the provisions of paragraphs 5.4 and 5.5, above, and this paragraph 5.6. Every report, recommendation, finding, or conclusion issued by Lowney shall be subject to the limitations stated therein.

5.7 Lowney and Client waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitations, to all consequential damages due to either party's termination.

6.0 SCOPE AND EXECUTION OF SERVICES

6.1 Lowney will serve the Client by providing professional counsel and technical advice based on information furnished by the Client. The Client will make available to Lowney all known information regarding existing and proposed conditions of the site, including the location of all underground utilities and installations, and will immediately transmit any new information that becomes available or any change in plans. When hazardous materials are known, assumed or suspected to exist at a site, Lowney may be required by law to take appropriate precautions to protect the health and safety of its personnel. Client hereby warrants that if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, Client will immediately inform Lowney and warrants that Client has done its best to inform Lowney of the known or suspected hazardous materials' type, quantity, and location. Client and Lowney agree that Lowney

shall not be responsible for any claims, damages, costs, or losses arising from or in any way related to conditions not actually encountered during the course of Lowney's work and Lowney shall not have any liability or responsibility for losses resulting from inaccurate or incomplete information supplied by Client, and Client agrees to defend and indemnify Lowney against claims, damages, costs, or losses arising there from. Lowney shall not be liable for failing to discover any condition the discovery of which would reasonably require the performance of services not authorized by Client.

6.2 Lowney will diligently proceed with its services and will submit its report in a timely manner, but it is expressly agreed and understood by Client that Lowney shall not be held responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time of the execution of the Agreement between the parties. Lowney will not be responsible for any damages, consequential or otherwise, caused by delays in the completion of the Work. Lowney makes no warranties regarding time of completion of the Work. In the event that the Work is interrupted or delayed due to causes beyond Lowney's control (including, but not limited to, acts of God, war, riot, insurrection, inclement weather, fire acts of third parties or governmental bodies, or matters within the control of Client), Lowney shall be paid compensation for labor, equipment, and other costs Lowney incurs in order to perform the Work for the Client's benefit during the interruption or delay.

6.3 The individual or individuals who contract with Lowney on behalf of the Client warrant that they are duly authorized agents of the Client and are empowered to so contract.

6.4 Unless otherwise agreed in writing, the Client shall be entitled to two copies of each report prepared by Lowney.

6.5 In the event that Lowney submits a proposal including these Terms and Conditions of Agreement, to provide professional services and the Client authorizes the Work by means of a purchase order or other writing ("Confirmation"), it is expressly agreed that these Terms and Conditions shall apply, and any terms, condition, or provisions appearing in the Confirmation are void and inapplicable except to the extent the Confirmation authorizes the Work and binds Client to this Agreement.

6.6 If Lowney is authorized to commence and or continue providing its services on the Work either orally or in writing, prior to full execution of a written contract, such authorization shall be deemed an acceptance of this proposal, and all such services shall be provided and compensated for in accordance with the Terms and Conditions of Agreement contained herein as though this proposal were fully executed by Client.

6.7 Lowney will mutually coordinate its Work with the work to be undertaken by Client's Contractor and Consultants. Lowney shall not be responsible for the technical adequacy or accuracy of the professional services rendered by Client's consultants or the services provided by Client's contractors.

7.0 SITE SAFETY

7.1 Lowney shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the job or the work of any contractor, subcontractor, or their agents or employees, or any other person performing work or services on the job or at the site.

8.0 TERMINATION

8.1 Either party may terminate this Agreement by giving the other party seven (7) days' written notice. Notice shall be effective as of the date of deposit in the U.S. Mail of the written notice, properly addressed to the person to be notified. In the event that the Client requests termination of the services prior to completion of Work, Lowney reserves the right to complete such analyses and records as may be necessary to place its files in order and, where considered necessary to protect its professional reputation, to complete a report on the services performed to date. A termination charge of 10 percent of the total contract amount in addition to all costs incurred to the date of Work stoppage may be made at the discretion of Lowney.

9.0 OWNERSHIP OF DOCUMENTS

9.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents including those in electronic form prepared by Lowney, as instruments of Work, shall remain the property of Lowney whether the work for which they are made is executed or not. Client agrees that all documents and other services furnished to the Client or its agents, which are not paid for, will be immediately returned upon demand and will not be used by the Client or any other person, legal entity or professional on other projects or extensions to this work except by agreement in writing and with appropriate compensation to Lowney. Any unauthorized use of the documents shall be at the Client's own risk and without liability to Lowney and its employees, consultants and subcontractors.

9.2 Client warrants that Lowney, in order to perform its Work under this Agreement, has the unrestricted license and right to use any information provided to Lowney by the Client or others. Lowney is not responsible for the accuracy of information or data presented by others.

10.0 RIGHT OF ENTRY

10.1 The Client will provide for right of entry of Lowney personnel and all necessary equipment, in order to complete the Work. While Lowney will take all reasonable precautions to minimize any damage to the property including underground utilities, it is acknowledged and agreed by Client that in the normal course of the Work some damage may occur, the correction of which is not part of this Agreement. Accordingly, Client shall waive any claim against Lowney and its employees, consultants and subcontractors and agree to defend and indemnify Lowney and its employees, consultants and subcontractors from any claims arising from entering or working on the site which is the subject of the Work except only losses caused by the sole negligence or willful misconduct of Lowney and its employees, consultants and subcontractors.

11.0 MONITORING OF CONSTRUCTION

11.1 The Client hereby acknowledges and understands that unanticipated or changed conditions may be encountered during construction. Further, there is a substantial risk to both the Client and to Lowney if Lowney is not engaged to provide complete services, including but not limited to, construction observation services. Such risks include the increased likelihood of misinterpretation of Lowney's findings and conclusions, and error in implementing recommendations by Lowney. Therefore, if the Client fails to retain Lowney to provide complete services, the Client agrees to defend and indemnify Lowney against any and all claims, damages, costs, and losses arising out of or in any way related to the Work or arising out of implementing or interpreting Lowney's work product except when the Claim arises from the sole negligence of Lowney or where the Claim arises from the willful, wanton, or reckless conduct of Lowney.

11.2 Lowney shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents.

11.3 Lowney shall not be responsible for the acts or omissions of any contractor or subcontractor or any of the contractors' or subcontractors' agents or employees or any other persons performing any work on the project.

11.4 The Client shall provide prompt notice to Lowney if the Client becomes aware of any fault or defect in the Project or Development, including any errors, omissions, or inconsistencies in Lowney's Work or contract documents.

12.0 DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS

12.1 Hazardous materials or other toxic substances may exist at a site where there is no reason known to Client to believe they could or should be present. Lowney and Client agree that the discovery of unanticipated potentially hazardous materials constitutes a changed condition mandating a renegotiation of the scope of Work or termination of Work. Lowney and Client also agree that the discovery of unanticipated potentially hazardous materials may make it necessary for Lowney to take immediate measures to protect public health, safety, and the environment. Lowney agrees to notify Client as soon as practically possible should unanticipated hazardous materials be encountered. Client encourages Lowney to take any or all measures that in Lowney's professional opinion are justified to preserve and protect the health and safety of Lowney's personnel, the public, and the environment, and Client agrees to compensate Lowney for the cost of such services. Further, the Client agrees to defend and indemnify Lowney from any and all claims, damages, costs, and losses arising out of or in any way related to subsurface sampling, including, but not limited to, claims, damages, costs, and losses arising from cross-contamination except when the Claim arises from the sole negligence of Lowney or where the Claim arises from the willful, wanton, or reckless conduct of Lowney.

13.0 CONTAMINATION OF A WATER-BEARING ZONE

13.1 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring is advanced or drilled through a contaminated area, into a clean soil or a water-bearing zone. Because of the risks posed by such Work, and because subsurface sampling is often a necessary part of Lowney's Work, the Client hereby agrees to waive all claims against Lowney that in any way arise out of subsurface sampling, including claims relating to cross-contamination.

14.0 DISPOSAL OF SAMPLES AND DRILL CUTTINGS

14.1 Lowney shall hold samples collected during the performance of its Work no longer than 45 calendar days after issuance of any document that includes data obtained from them unless Client advises in writing otherwise; drill cuttings will be left on-site. In the event that soil, rock, water, or drill cuttings, and/or other samples or material are contaminated or are suspected to contain hazardous materials or other toxic substances hazardous or detrimental to public health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Lowney will, after completion of testing, notify the Client of same in order for the Client to arrange for the disposal of samples and materials. The Client recognizes and agrees that Lowney at no time assumes title to said samples and/or materials. The Client, not Lowney, remains ultimately responsible for selecting the disposal or treatment facility to which such samples and/or materials are to be delivered. The Client agrees to pay all costs associated with any storage, transport, and disposal of samples and materials, and to defend and indemnify Lowney from any and all claims arising out of or in any way related to the storage, transport, and disposal of asbestos, hazardous or toxic substances, or pollutants, including but not limited to, any samples and/or materials.

15.0 PREVAILING WAGE OBLIGATIONS

15.1 Client shall notify Lowney in writing if the Work subject to this Agreement constitutes a "public work" under any and all federal, state, and/or local prevailing wage laws, and/or living wage laws and/or ordinances, including, but not limited to, the Davis-Bacon Act and the provisions of California Labor Code §§ 1720, *et seq.* In addition, Client shall notify Lowney if Lowney is obligated by statute, any public contracting authority, and/or a developer to pay prevailing wages and benefits and/or any other predetermined wages or benefits (collectively, "prevailing wage obligations"). In the event that Lowney must adhere to federal, state, and/or local prevailing wage obligations for Work performed, Client shall provide Lowney with any and all prevailing wage determinations applicable to the Work to be performed by Lowney. Client understands and agrees that Lowney's fee for Work performed under this Agreement will be calculated, in part, on the basis of representations by Client regarding the existence and amount of any and all prevailing wage obligations and that, if such obligations exist, Lowney's fee might be different. Client further understands and agrees that Lowney will rely on the representations made by Client with regard to prevailing wage obligations and Client agrees to indemnify Lowney against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees, arising from Lowney's reliance upon Client's representations regarding prevailing wage obligations. Client agrees that in the event of any such claims, suits, and/or demands, Lowney shall have the right to select counsel of its choosing.

16.0 CERTIFICATE OF MERIT

16.1 The client shall make no claim for professional negligence unless the Client has first provided Lowney with a written certification executed under penalty of perjury by an independent consultant currently practicing in the same discipline and geographic area as Lowney and licensed as a professional engineer or registered geologist in the State of California. This certification shall: a) contain the name and license number of the certifier; b) specify with particularity the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; c) state the time spent by certifier in rendering this opinion; and d) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care including references to literature, treatises or textbooks to support the certifier's conclusions. This certificate shall be provided to Lowney no less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation, arbitration or judicial proceeding. At least fifteen (15) days before providing the certificate to Lowney, Client shall ensure that the proposed certifier notify Lowney in writing of the certifier's intended certification and the content thereof, and Client shall arrange for Lowney to discuss the matter with the certifier in an attempt to correct any misinformation in the intended certification and/or to resolve the matter. If Client fails to comply with the Certificate Of Merit process contained in this section 16, then (1) Client waives and foregoes any claim or entitlement to recovery of attorneys' fees and litigation costs otherwise recoverable under this contract, and (2) Client is estopped and precluded from pursuing any method of mediation, arbitration and litigation against Lowney until such time as Client does comply herewith (the "Claim Preclusion"). In agreeing to the Claim Preclusion, Client agrees that compliance with the Certificate Of Merit process is jurisdictional.

17.0 MISCELLANEOUS PROVISIONS

17.1 The term "indemnify" shall mean indemnify, defend, and hold harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon ("claims"), accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including death, or economic losses, arising out of the item, matter, action, or inaction specified in the specific provision.

17.2 This Agreement shall be governed by California law. The venue for any legal action brought pursuant to this Agreement shall be located within the County of Santa Clara, State of California.

17.3 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Client or Lowney.

17.4 The Client and Lowney, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Client shall not assign this Agreement or any right or cause of action hereunder without the written consent of Lowney.

17.5 Lowney and Client agree to disfavor litigation and to use mediation to resolve disputes. If initial discussions between Lowney and Client fail to settle a dispute or claim relating to this Agreement or breach thereof the parties agree to submit such dispute to non-binding mediation to effect a resolution to such dispute or claim. Construction Industry Mediation Rules of American Arbitration Association shall apply. Demand for mediation shall be made in writing with the other party to this Agreement within a reasonable time after the claim, dispute or other matter in questions has arisen, if prior discussions have not led to a settlement.

17.6 Unless specified otherwise by Lowney, this quotation shall not remain in effect after thirty (30) days of the proposal date.

17.7 Lowney maintains a General Engineering A license (No. 682286) and Hazardous Substances Removal and Remedial Actions Certification with the State of California, which are regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

17.8 Client agrees that Lowney may use and publish Client's name and a general description of Lowney's services with respect to the project in describing Lowney's experience and qualification to other clients or prospective clients.

17.9 This Agreement shall not create any rights or benefits to parties other than Client or Lowney. No third-party shall have the right to rely on Lowney's opinions rendered in connection with Lowney's services without Lowney's written consent and the third-party's agreement to be bound to the same terms and conditions as Client.

17.10 Client acknowledges and agrees that it has received and reviewed these Terms and Conditions and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.